

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL DALLAS JAMES,

Petitioner,

vs.

ROSEANNE CAMPBELL, Warden,

Respondent.

No. C 07-0782 JSW (PR)

ORDER TO SHOW CAUSE

INTRODUCTION

Petitioner, a prisoner of the State of California, currently incarcerated at Mule Creek State Prison in Ione, California, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the constitutional validity of his state conviction. Petitioner has paid the filing fee. This order directs Respondent to show cause why the petition should not be granted.

BACKGROUND

According to the petition, Petitioner was sentenced on August 26, 1997 to 26 years and four months incarceration after a guilty plea in the Santa Clara County Superior Court to voluntary manslaughter, possession of a firearm, a “serious prior” conviction and the imposition of a sentencing enhancement under Penal Code §667(a). Petitioner raised his claims in the California Court of Appeal by a petition for writ of habeas corpus, which was denied in 2005. The Supreme Court of California denied Petitioner’s habeas petitions in 2006 and 2007. The instant federal habeas petition was filed on February 6, 2007.

DISCUSSION

I Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a person

1 in custody pursuant to the judgment of a State court only on the ground that he is in
 2 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
 3 § 2254(a).

4 It shall “award the writ or issue an order directing the respondent to show cause
 5 why the writ should not be granted, unless it appears from the application that the applicant
 6 or person detained is not entitled thereto.” *Id.* § 2243.

7 II Legal Claims

8 The petition raises the following ground for relief: 1) Petitioner did not knowingly
 9 and voluntarily waive his right to trial on the “serious” felony prior; and 2) Petitioner
 10 suffered ineffective assistance of counsel under the Sixth Amendment in defense
 11 counsel’s advice to Petitioner that he plead guilty to the prior “serious” felony conviction.
 12 Liberally construed, it does not appear from the face of the petition that Petitioner is not
 13 entitled to relief on his claims. Accordingly, Respondent is ordered to respond to the
 14 petition as set forth below.


15 CONCLUSION

16 For the foregoing reasons and for good cause shown,

17 1. The Clerk shall serve by certified mail a copy of this order and the petition, and
 18 all attachments thereto, on Respondent and Respondent's attorney, the Attorney General of
 19 the State of California. The Clerk also shall serve a copy of this order on Petitioner.

20 2. Respondent shall file with the Court and serve on Petitioner, within **sixty (60)**
 21 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the
 22 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should
 23 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all
 24 portions of the state trial record that have been transcribed previously and that are relevant
 25 to a determination of the issues presented by the petition. If Petitioner wishes to respond
 26 to the answer, he shall do so by filing a traverse with the Court and serving it on
 27 Respondent within **thirty (30)** days of his receipt of the answer.
 28

IT IS SO ORDERED.


JEFFREY S. WHITE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL DALLAS JAMES,
Plaintiff,

Case Number: CV07-00782 JSW

CERTIFICATE OF SERVICE

v.

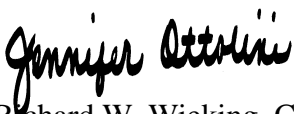
ROSEANNE CAMPBELL et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 26, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Michael Dallas James
P07062
M.C.S.P.
P.O. Box 409020
Ione, CA 95640

Dated: July 26, 2007


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk